

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0120-PST-E TCEQ ID: RN101910255 CASE NO.: 35241
RESPONDENT NAME: DURAN PROPERTIES, INC.

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 400 State Highway 35, Gregory, San Patricio County</p> <p>TYPE OF OPERATION: Temporarily out of service petroleum storage tank facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690 TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC 14, (361) 825-3106 Respondent: Mr. R. M. Vito Duran, President, Duran Properties, Inc., 109 Markham Place, Portland, Texas 78374 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: October 30, 2007</p> <p>Date of NOE Relating to this Case: December 17, 2007</p> <p>Background Facts: The EDRP was filed July 10, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDRP on August 6, 2008. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference. </p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PST:</p> <p>1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0009151U for fiscal years 1995 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$23,625</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$23,625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements: The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Permanently remove the UST system from service; and Submit payment for all outstanding fees, including any associated penalties and interest. Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions above.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	2-Jan-2008	
PCW	15-May-2008	Screening	16-Jan-2008
		EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Duran Properties, Inc.		
Reg. Ent. Ref. No.	RN101910255		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35241	No. of Violations	2
Docket No.	2008-0120-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$22,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **5% Enhancement** **Subtotals 2, 3, & 7** **\$1,125**

Notes Enhancement for one previous NOV with the same violation.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

0% Enhancement* **Subtotal 6** **\$0**
 Total EB Amounts \$4,890
 Approx. Cost of Compliance \$10,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$23,625**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$23,625**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$23,625**

DEFERRAL **0%** **Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$23,625**

Screening Date 16-Jan-2008**Docket No.** 2008-0120-PST-E**PCW****Respondent** Duran Properties, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35241

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101910255**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Thomas Greimel**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%>> **Compliance History Summary****Compliance History Notes**

Enhancement for one previous NOV with the same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 16-Jan-2008 Respondent Duran Properties, Inc. Case ID No. 35241 Reg. Ent. Reference No. RN101910255 Media [Statute] Petroleum Storage Tank Enf. Coordinator Thomas Greimel Violation Number <input type="text" value="1"/> Rule Cite(s) <div style="border: 1px solid black; padding: 5px; text-align: center;">30 Tex. Admin. Code § 334.47(a)(2)</div> Violation Description <div style="border: 1px solid black; padding: 5px;">Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.</div>	<div style="text-align: right;">PCW</div> Docket No. 2008-0120-PST-E <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision November 6, 2007</i>															
Base Penalty <input type="text" value="\$10,000"/>																
>> Environmental, Property and Human Health Matrix																
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Major Moderate Minor</td> <td></td> </tr> <tr> <td style="text-align: right;">Release</td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: right;">Potential</td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> </tr> </table> <div style="text-align: right;">Percent <input type="text" value="25%"/></div>		Harm			Major Moderate Minor		Release			Actual	<input type="text"/>	<input type="text"/>	Potential	<input type="text" value="x"/>	<input type="text"/>
	Harm															
	Major Moderate Minor															
Release																
Actual	<input type="text"/>	<input type="text"/>														
Potential	<input type="text" value="x"/>	<input type="text"/>														
>> Programmatic Matrix																
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major Moderate Minor</td> </tr> <tr> <td style="text-align: right;">Falsification</td> <td><input type="text"/></td> </tr> </table> <div style="text-align: right;">Percent <input type="text" value="0%"/></div>		Major Moderate Minor	Falsification	<input type="text"/>											
	Major Moderate Minor															
Falsification	<input type="text"/>															
Matrix Notes	Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.															
Adjustment <input type="text" value="\$7,500"/>																
<input type="text" value="\$2,500"/>																
Violation Events																
<div style="display: flex; justify-content: space-between;"> Number of Violation Events <input type="text" value="9"/> <input type="text" value="79"/> Number of violation days </div> <div style="display: flex; align-items: flex-start; margin-top: 10px;"> <div style="margin-right: 10px; font-size: small;"> mark only one with an x </div> <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td><input type="text" value="x"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td><input type="text"/></td></tr> </table> <div style="margin-left: 20px; align-self: center;"> Violation Base Penalty <input type="text" value="\$22,500"/> </div> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; text-align: center;"> Nine monthly events are recommended (three months per tank) from the October 30, 2007 investigation date to the January 16, 2008 screening date. </div>		daily	<input type="text"/>	monthly	<input type="text" value="x"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>			
daily	<input type="text"/>															
monthly	<input type="text" value="x"/>															
quarterly	<input type="text"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input type="text"/>															
Economic Benefit (EB) for this violation																
<div style="display: flex; justify-content: space-between;"> <div> Estimated EB Amount <input type="text" value="\$4,890"/> </div> <div> Statutory Limit Test Violation Final Penalty Total <input type="text" value="\$23,625"/> </div> </div> <div style="text-align: right; margin-top: 5px;"> This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$23,625"/> </div>																

Economic Benefit Worksheet

Respondent Duran Properties, Inc.
Case ID No. 35241
Reg. Ent. Reference No. RN101910255
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	30-Sep-2008	9.8	\$4,890	n/a	\$4,890

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date when the Respondent was required to upgrade the UST system. Final Date is the date the Respondent is expected to come into compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,890

Screening Date 16-Jan-2008

Docket No. 2008-0120-PST-E

PCW

Respondent Duran Properties, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35241

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101910255

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description

Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0009151U for fiscal years 1995 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events

Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$0

No penalty is recommended because penalty and interest will be assessed at the next billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent: Duran Properties, Inc.
Case ID No.: 35241
Reg. Ent. Reference No.: RN101910255
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN601043821	Duran Properties, Inc.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101910255	Duran Properties, Inc.	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		19744
Location:	400 STATE HWY 35, GREGORY, TX, 78359		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	January 31, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 31, 2003 to January 31, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Thomas Greimel	Phone:	(512) 239-5690	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 1 01/30/2007 (537521)
 2 12/17/2007 (572902)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 01/30/2007 (537521)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
 Description: 30 Tex. Admin. Code Section 334.47(a)(2) - Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DURAN PROPERTIES, INC.,
RN101910255**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0120-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Duran Properties, Inc. ("Duran").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Duran owns a temporarily out of service petroleum storage tank facility located at 400 State Highway 35, Gregory, San Patricio County, Texas (the "Facility").
2. Duran's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Duran's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on October 30, 2007, a TCEQ Corpus Christi Regional Office investigator documented that Duran:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements;
 - b. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0009151U for fiscal years 1995 through 2007.
4. Duran received notice of the violation on or about December 22, 2007.

4. Duran received notice of the violation on or about December 22, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Duran Properties, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on July 10, 2008.
6. By letter dated July 10, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Duran with notice of the EDPRP. According to the return receipt "green card", Duran received notice of the EDPRP on August 6, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Duran received notice of the EDPRP, provided by the Executive Director. Duran failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Duran is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 5.702 and ch. 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Duran failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Duran failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0009151U for fiscal years 1995 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Duran with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Duran has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Duran and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Duran for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of twenty-three thousand six hundred twenty-five dollars (\$23,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Duran is assessed an administrative penalty in the amount of twenty-three thousand six hundred twenty-five dollars (\$23,625.00) for violations of TEX. WATER CODE chs. 5 and 26, and rules of the TCEQ. The payment of this administrative penalty and Duran's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Duran Properties, Inc.; Docket No. 2008-0120-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Duran shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Duran shall:
 - i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

- ii. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Duran Properties, Inc., TCEQ Financial Administration Account No. 0009151U," to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- b. Within 45 days after the effective date of this Order, Duran shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a.i. and 2.a.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Duran. Duran is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Duran fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Duran's failure to comply is not a violation of this Order. Duran shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Duran shall notify the Executive Director within seven days after Duran becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Duran shall be made in writing to the Executive Director. Extensions are not effective until Duran receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Duran if the Executive Director determines that Duran has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF XAVIER GUERRA

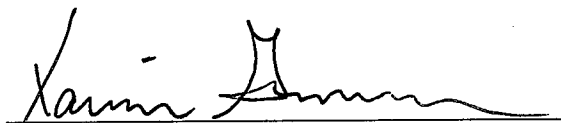
STATE OF TEXAS §
 §
COUNTY OF BEXAR §

"My name is Xavier Guerra. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Duran Properties, Inc." (the "EDPRP") with the Office of the Chief Clerk on July 10, 2008.

I sent the EDPRP to Duran at its last known address on July 10, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Duran received notice of the EDPRP on August 6, 2008, as evidenced by the signature on the card.

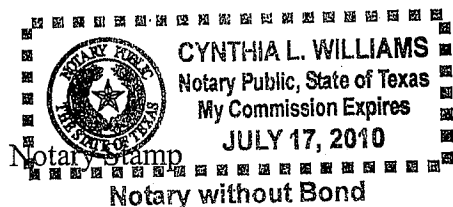
More than 20 days have elapsed since Duran received notice of the EDPRP. Duran failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".



Xavier Guerra
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 18th day of Sept., A.D., 2008.



Notary Signature